

**HM Treasury (HMT)  
Call for evidence on the taxation of employee expenses  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 The LITRG are pleased to respond to this call for evidence on the taxation of employee expenses – we are responding to it on behalf of the low-paid. In particular we have been concerned about the activities of some tax refund companies and would like to commend HMT for looking at them in this call for evidence.
- 1.2 There have been major changes in the labour market in recent years which have tended to drive down levels of remuneration at the lower end of the market. As a result, employees that we are concerned with are less and less likely to have their employment expenses paid or reimbursed by their employers – this may be one of the reasons that there has been a 25% increase in claims for non-reimbursed expenses between 2009-10 and 2014-15.
- 1.3 Not receiving any payment or reimbursement for expenses that are necessarily incurred in the performance of their duties leaves employees out of pocket. Any tax relief on their unreimbursed expenses is therefore very valuable but is probably only worth 20% of the costs which they have incurred. Indeed, if their income is below the personal allowance, even this reimbursement is unavailable and as the personal allowance increases at a faster rate than average earnings, more workers on low incomes are unable to claim tax relief on their expenses. This is a problem often described by home care workers who write to us, some of whom travel many thousands of miles each year in their own cars but whose costs are relieved neither by their employers nor the tax system.

1.4 There are other 'difficult' aspects of the current unreimbursed expenses system as far as low-paid employees are concerned, of which we give a summary in this response, together with recommendations as to how changes to the system may help to overcome them:

- The emails we receive from home care workers suggest to us that many of them do not even have a rudimentary understanding of the tax system, leaving them open to exploitation. This is something that HM Revenue and Customs (HMRC) can and should do something about by supplying clear, user friendly, targeted information. They should also ensure that it is disseminated through more than one channel, for example, through unions or voluntary sector organisations dealing with the relevant part of the population or large employers, as well as through GOV.UK.
- We suggest that the Government consider possible options for providing some much needed relief on carers' mileage expenses. This might, for example, be by allowing carry forward or carry back claims in certain circumstances, or by allowing them to claim National Insurance relief.
- The National Minimum Wage (NMW) regulations should be corrected to allow home care workers to take account of all their travel expenses (even home to work) in assessing their entitlement to NMW, in the same way as the costs of all such travel are allowable against their tax bill. We recommend that the Government consult further on this as part of the follow-up to this initial call for evidence.
- Ideally, there would be a better process around Flat Rate Expenses (FREs), so that people who should qualify for these allowances get them in their code automatically. We wonder whether, in the era of Real Time Information (RTI) (where HMRC receive Full Payment Submissions from an employer on a regular basis) a system can be developed for automatic inclusion of allowances in relevant Pay As You Earn (PAYE) codes (and their review and removal when appropriate). In the meantime, it is essential that clearer guidance on FREs is made available, and that this is well-publicised and communicated.
- There needs to be better information made available around travel expenses to help ensure that employees can make accurate claims. Some specific guidance, along with worked illustrations, outlining the applicability of the travel rules to different occupations with unusual travel patterns could be extremely helpful. In particular we believe that employees are often confused over the definition of temporary and permanent workplaces and the concept of 'itinerant'.
- HMRC, working with HMT and the Department for Work and Pension (DWP), should do more to ensure that claimants are aware of their right to deduct expenses, and the limitations of RTI data in this respect. HMRC should also refrain from pursuing tax credit overpayments caused by confusion over the deductibility of temporary workplace expenses, where necessary.

- In addition, the Universal Credit (UC) position on unreimbursed expenses should be confirmed as soon as possible. It should be reiterated that the current benefits and tax credits systems do allow such deductions to be made.
- HMRC should host the online P87 as a standalone form outside of the Personal Tax Account platform as they do the Marriage Allowance form, for example, where you do not have to go through either the Government Gateway or GOV.UK Verify.
- HMRC should consider removing unnecessary barriers to the completion of the online P87 such as the request for the Employer's PAYE Reference. Alternatively, HMRC should make it perfectly acceptable to write 'unknown' or 'N/A' in the box, and still be able to carry on with the form. The online form should be tested on an ongoing basis to make sure it is in full working order at all times.
- It would be really useful to be able to see everything the print and post version of form P87 asks at the outset – that way you could familiarise yourself with its requirements before you start trying to complete it. In any case, HMRC should reinstate the full, downloadable, PDF version of the form for people who may be unable to use any of the versions of the P87 available or who would simply prefer to fill out a paper form.
- We recommend that serious consideration is given to the Office of Tax Simplification's (OTS) proposals around a relief at source mechanism for unreimbursed employee expenses.
- We understand the Government may be looking to re-establish some general principles around employment expenses and ensure these are in line with current employment practices. As such we repeat the call made in our travel expenses report<sup>1</sup> that low-paid agency workers should be provided with relief for their travel costs – by perhaps treating them the same as site based employees. This would of course have an associated cost, however it would also remove the incentive for many of the 'schemes' from the labour market – saving considerable effort all round.
- It is unfair that some expenses are permitted tax relief in instances of reimbursement, but are denied a corresponding deduction in instances of non-reimbursement. We wholeheartedly agree with the OTS's recommendation that a review of the underlying definitions and rules for NICs and income tax is undertaken with a view to aligning them as far as possible. In the case of disability related expenses, there is a principled case for doing this (which dovetails with other policy aims, such as reducing the disability employment gap).

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<sup>1</sup> <http://www.litrg.org.uk/latest-news/reports/141117-travel-expenses-low-paid-%E2%80%93-time-rethink>

- We suggest that the Government re-visit the recommendations in our refund company report<sup>1</sup> on easing the tax refund system. Additional 'quick fixes' like resuming work with internet service providers to ensure that paid-for adverts stop turning up at the top of search engine results, might mean that many taxpayers who are currently using companies to help them make very straightforward claims could be swayed to make their own claims at little or no cost.
- HMRC have a duty of care towards taxpayers and at the very least should put out some 'health warnings' about tax refund companies. HMRC's efforts should form part of a wider plan to protect vulnerable workers. Therefore we strongly recommend that the Budget announcement on strengthening consumer protection will include putting tax refund companies under the spotlight.

## **2 About Us**

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Introduction**

- 3.1 We are responding to this consultation from the perspective of low-paid employees. The evidence on which we rely is drawn from our email correspondence from and with individuals who experience the difficulties to which we draw attention, and information we

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<sup>1</sup> <http://www.litrg.org.uk/latest-news/reports/131015-tax-repayment-system-and-tax-refund-organisations-call-action>

have gathered in researching our published reports ‘Travel expenses, time for a rethink?’<sup>1</sup> and ‘The Tax Repayment System and Tax Refund Organisation – a call for action’.<sup>2</sup>

3.2 We have not addressed each of the individual questions as many cover topics outside of our field of knowledge. We feel we can make the best contribution by providing comments which we feel are relevant to this call for evidence and which we hope will inform the Government’s picture of employee expenses.

3.3 These have been organised into the four broad areas that the Government is interested in:

- Current employer practice on employee expenses – why the cost to the exchequer of the tax relief for expenses which are not reimbursed has increased.
- Can the current rules and administration be clearer and simpler?
- Whether the tax rules for expenses are suitable for the modern economy.
- The future of employee expenses – in this section we look at the role of tax refund agents and what more HMRC could do to protect consumers.

#### **4 Current employer practice on employee expenses**

4.1 The Government would like to understand more about what is driving the increased cost and volume of claims for non-reimbursed expenses. One possible reason is an increasing tendency among employers to be restrictive in terms of what they are prepared to pay or reimburse to employees.

4.2 As far as we are aware, there is no legal requirement for an employer to reimburse an employee’s expenses (although see our comments starting in section 4.12 on the NMW rules). Having said that, traditionally many employers *have* reimbursed reasonable expenses, such as business travel and subsistence costs.

4.3 However the employment landscape has been changing over the last five to 10 years and factors such as a ready labour supply, and growing costs and obligations on employers<sup>3</sup> may be holding down levels of remuneration. At the same time, major financial pressures faced

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<sup>1</sup> <http://www.litrg.org.uk/sites/default/files/LITRG%20PAYE%20report%20FINAL.pdf>

<sup>2</sup> <http://www.litrg.org.uk/latest-news/reports/131015-tax-repayment-system-and-tax-refund-organisations-call-action>

<sup>3</sup> The gross monetary cost to employers of hiring employees will include: National Minimum or Living Wage, holiday pay, sick pay, the administrative cost of running a payroll, employment protection costs, such as the costs of unfair dismissal claims and statutory and enhanced redundancy compensation, Employers’ NIC, currently adding 13.8% to much of the wage bill, pension contributions (affecting all employers by 2018) and for larger employers – the apprenticeship levy.

by employees as a result of low pay and having little negotiating leverage to assert their wishes, means they will often take what they can get.

- 4.4 This situation is no more prevalent than in the private home care industry – which has boomed during the period HMT are looking at, meaning there are more care workers than ever.<sup>1</sup> However during this same time, local authority outsourcing budgets have been cut and competition between private providers to win contracts on a lowest-cost basis means that (in addition to already bleak pay and conditions) fewer care workers enjoy the luxury of having their mileage expenses reimbursed. For example, one correspondent said:

*'Hi, my friend works part-time as she is a single mother. She earns roughly 7 or 8k per year. She is a carer and has to use her own car for work. Her employer pays zero mileage rate...'*

- 4.5 Today's road fuel prices mean that travelling around to see their clients can involve significant cost to these employees, relative to their already limited budgets. Not receiving any payment or reimbursement for these expenses leaves them out of pocket and so any help the tax system can give them is valuable as it helps to ameliorate their position slightly. Putting aside the possibility of an element of fraud or error in the figure of £800 million quoted by HMT, it seems to us that carers' mileage claims could be a large component part of this figure.

- 4.6 It is worth looking at the help the tax system gives to such employees. Arguably, many carers will be able to deduct all their travel costs from their taxable income, including from home to work, because like a 'service engineer who moves about from place to place during the day, carrying out repairs to domestic appliances at client's premises',<sup>2</sup> their duties inherently involve travelling. Even if the employee does not have a 'travelling appointment' it is likely that every place that they attend is a 'temporary workplace' under ITEPA 2003, s338.<sup>3</sup> There is then the statutory system of tax-free approved mileage allowances for business journeys in an employee's own vehicle which provide relief at 45p for the first 10,000 miles, and all subsequent miles at 25p per mile. If an employer pays less than these amounts, the employee can claim tax relief for the unused balance of the approved amount.

- 4.7 Many employers seem to rely on the existence of the Mileage Allowance Relief (MAR) system to 'explain away' the non-payment of mileage expenses, as we can see from this query (received in 2014 when the NMW was £6.50 an hour):

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<sup>1</sup> For reasons that are explained in this research report for the Low Pay Commission:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/227614/LPC\\_-\\_Final\\_Leeds\\_University\\_Report\\_-\\_26\\_February\\_2013SM2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227614/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf)

<sup>2</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32366>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2003/1/section/338>

*'I work for (care provider) a franchise of (care provider). The job advert specified a car was required. My contract is zero hours, basic pay £6.53ph + 0.67ph holiday pay. In the induction we were advised petrol costs would be covered by HMRC under the P87 system'*

- 4.8 However, for the employees, many of whom lack even a broad understanding of the tax system, it is a shock to discover that MAR system does not actually pay them 45p a mile and only gives them tax relief on it:

*'I contacted HMRC with regard to claiming mileage. I completed form P87, and have been advised I will only get 20% of my claim. Form P87 clearly states 45p is paid per mile and not what I was told, which is 20% of that sum. Please can you help??'*

- 4.9 For others, MAR is totally meaningless, as being able to claim tax relief depends on there being a tax liability in the first place, which for the very lowest paid carers is often not the case as we can see from the query below. This is particularly so given recent years' above-inflation increases in the personal allowance:

*'i work as a carer in the community travelling to people in their own homes. i work 18 hrs per week and do not get paid mileage costs. i filled in p87 form to claim some mileage but after 5 mths was told i am not entitled to any mileage back as i do not pay enough tax! is this correct?'(sic)*

- 4.10 **Recommendations: These emails suggest to us the many employees do not even have a rudimentary understanding of the tax system, leaving them open to exploitation. This is something that HMRC can and should do something about by supplying clear, user friendly, targeted information. HMRC must also ensure that it is disseminated through more than one channel, for example, through unions or voluntary sector organisations dealing with the relevant part of the population or large employers, as well as through GOV.UK.**
- 4.11 **We would also suggest that the Government consider possible options for providing some much needed relief on carers' mileage expenses. This might, for example, be by allowing carry forward or carry back claims in certain circumstances, or by allowing them to claim National Insurance relief given it becomes payable at lower income levels.<sup>1</sup> (See also our comments in para 6.12.)**
- 4.12 There is another area of concern around carers and expenses which could form a future consultation topic all of its own – the different ways of treating employment expenses under the tax and NMW rules. This inconsistency can erode a carer's precarious position yet further in that it can mean they actually earn less than the minimum wage base rate.
- 4.13 The problem is that to meet client demand, carers' fragmented rotas often translate to 'rushed' visits around peak times with long gaps spent at home for which they are not paid.

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<sup>1</sup> In 2017/18, employee National Insurance becomes payable at £8,164 and tax becomes payable at £11,500.

They are not usually paid for the time spent 'on the road' to and from appointments and home, nor reimbursed the costs of such travel – all of which is legal under the current framework.

- 4.14 Looking at the expenses element, for NMW purposes, the rules say that expenses incurred 'in connection with an employment' (where not reimbursed) should not bring an employee's wage below the minimum wage. This phrase is not specifically defined in NMW legislation but, applying a general interpretation, would normally be taken to mean that costs incurred in the course of their work will count, but costs incurred in travelling from home to a place of work will not count.<sup>1</sup>
- 4.15 This is not all that controversial in the context of the first or last appointment of the day where travel to or from the care employee's home forms part of the journey. But what of journeys to and from the employee's home in those long gaps between client appointments – particularly when visits to an office base are probably restricted to picking up supplies or attending staff meetings? (A care worker would have to be paid for the time (and expenses) spent travelling from an appointment to an office base.)
- 4.16 **Recommendation: The NMW regulations should be amended to allow carers to take account of all their travel expenses (even home to work between appointments) in assessing their entitlement to NMW, in the same way as the costs of all such travel are allowable against their tax bill. Correcting this ambiguity in the NMW rules may go some way to improving the low paid carer's financial position. We recommend that the Government consult further on this as part of the follow-up to this initial call for evidence.**

## 5 Current tax rules on employee expenses

- 5.1 One of the aims of this call for evidence is that the Government would like to understand whether the current rules and/or their administration are clear and simple. We think that the answer for our constituency of low-income taxpayers is they are neither for reasons set out in the following two sub sections.
- 5.2 **Rules**
- 5.2.1 In terms of the first part of this question (can the current rules be clearer or simpler), we think the rules around some employee expenses are not well known and/or are very obscure. This means that taxpayers may be unaware that they are able to claim valuable tax relief for their expenses in the first place or, even if they are aware, be so confused about their entitlement that they 'give up' – afraid of getting things wrong.

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<sup>1</sup> For some scenarios on travel time see Appendix C in HMRC's report on minimum wage compliance in the social care sector:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262269/131125\\_Social\\_Care\\_Evaluation\\_2013\\_ReportNov2013PDF.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262269/131125_Social_Care_Evaluation_2013_ReportNov2013PDF.PDF)

- 5.2.2 For example, FREs can be claimed by individuals who incur expenditure on the maintenance, repair or replacement of work equipment and specialist clothing (which can include uniforms). These are agreed with the trade unions (although you do not have to be a trade union member to claim them) and are intended to represent the average annual expense incurred by employees. They are an alternative to claiming actual expenditure and there is no need to keep records, receipts or make annual claims.
- 5.2.3 FRE's could be of significant benefit for those on low pay. This might lead us to expect that we would be inundated with queries from employees about them and how to claim them. However somewhat in contrast to the number of queries we get on travel expenses (see below), we get very few. We think an explanation for this is that employees are unaware of the existence of FREs.
- 5.2.4 This is worrying, although not entirely surprising, based on the fact that the detail about FREs is not even in the place where you might expect it to be – in the 'You're employed' section of the 'Claim a tax refund' pages of GOV.UK.<sup>1</sup> Instead it is in the separate 'tax relief for employment' section.<sup>2</sup>
- 5.2.5 Even if a low-income taxpayer was aware of the existence of FREs, we think it is worth examining what they would have to grapple with in order to decide whether or not they can claim a simple 'uniform allowance' (we look at this from the perspective of a low-paid nursery assistant, as this is a query that has recently been put to one of our technical officers):
- Is my uniform, a 'uniform'? To count, it must be something that is 'recognisably a uniform'.<sup>3</sup> What this means is, if you were out in the street would a member of the general public recognise you as wearing a uniform? The nursery assistant is required to wear plain black trousers and a pale blue shirt with the name of the nursery and a teddy bear embroidered into the shirt. Relief would not be available for the trousers but if you are required to wear clothing branded by your employer, with logos, the company name, etc., this would be a 'uniform', so the shirt can qualify.
  - Does my expenditure count? You cannot usually claim for the initial cost of buying the 'uniform' items. Instead, you can claim for their upkeep, for example, repairing, cleaning or replacing them. The nursery assistant washes her shirts frequently at home in her washing machine with the rest of her clothes. Per HMRC's guidance, this seems to be enough to

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<sup>1</sup> <https://www.gov.uk/claim-tax-refund/too-much-tax-taken-from-your-pay>

<sup>2</sup> <https://www.gov.uk/tax-relief-for-employees>

<sup>3</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32475>

trigger a claim (although this is a bit counterintuitive given how tightly drawn the expense rules are in other areas and the fact there is likely to be little 'extra' expenditure incurred).<sup>1</sup>

- What basis shall I use for my claim? HMRC have agreed that employees in a range of industries can claim tax relief on fixed amounts for the upkeep of a uniform which are not paid for by the employer. Alternatively, you can claim tax relief for the actual amounts you spend – however you need evidence of your expenses to do this. It is impossible for the nursery assistant to identify the exact cost of washing her shirts at home and in any case it is likely to be very small, so the flat rate expenses system will prove the best route here.
- Where am I on the list? Specific occupations can claim specific amounts as shown on a list kept by HMRC, for example an ambulance driver can claim £185 per year, but a nurse can only claim £125 (although may be able to claim a shoe and tights allowance...). Does the nursery assistant come under a 'nurse'? Is she a healthcare worker (entitled to £80)? The likelihood is that she is neither and because she fits no-where else on the main list, she is probably only able to claim £60.<sup>2</sup>

5.2.6 Even if the nursery assistant manages to reach the decision that she is entitled to a uniform allowance of £60 per year, as we will go on to see in section 5.3, she may then face difficulties in claiming the relief.

5.2.7 Taken together, all of this helps explain the proliferation of tax refund companies that seem to be targeting FRE employees. Many of these tax refund companies partner with employers, unions and other staffing organisations<sup>3</sup> who – for payment of some commission – encourage staff to use them to secure tax refunds. We look at this further in section 7.

5.2.8 **Recommendations: Ideally, LITRG would prefer there to be a better process around FREs. We wonder whether, in the era of RTI (where HMRC receive Full Payment Submissions from employers on a regular basis) a system could be developed for automatic inclusion of allowances in relevant PAYE codes<sup>4</sup> (and their review and removal when appropriate). In the meantime, it is essential that clearer guidance on FREs is made available, and that this is well-publicised and communicated.**

5.2.9 When thinking about whether the rules on employee expenses could be clearer or simpler, as alluded to in para 4.6, the rules on what constitutes business travel are very complex for anyone but a trained tax adviser to work out. Interestingly, the guidance in GOV.UK in no

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<sup>1</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32480>

<sup>2</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32485>

<sup>3</sup> <http://thetaxrefundcompany.co.uk/clients/>

<sup>4</sup> This may be theoretically possible if there were occupation/industry fields in the FPS.

way indicates that 'business travel' is as complex as it is. It simply says: 'You can't claim for travelling to where you work, unless it's a temporary place of work'.<sup>1</sup>

5.2.10 There is no discussion on GOV.UK of the nuances around the meaning of the word 'temporary' per the legislation and HMRC's interpretation – meaning many people will just give it its natural, ordinary meaning and consider their situations covered. Employees could in theory find the correct technical information they need on this important topic in HMRC's Employment Income Manual.<sup>2</sup> But that material is hundreds of pages long, is not written for the non-expert reader and is therefore hard to follow (not to mention locate, in the vast recesses of GOV.UK).

5.2.11 This may explain why we get the number of travel-related queries that we do:

*'I was wondering if i could claim travel exspenes .i do 30mile a day. four days a week. I am demonstrator i get a rota to go to different stores .that's the15mile each way .can u please let me no look forward to hearing from you'(sic)*

*'can I claim tax back on traveling to work ect and if so how far back can this be up dated'(sic)*

*'Hi I need some advice on travel expenses. I've been employed for 4 years with my current employer. I travel to work and to different customers during the day work lots of different places sometimes carrying work goods and my tools to do my job with. I get payed 30ppm minus 28miles wich is how far our unit is there and back from my house. Altho sometimes I'll go strait on site from home a lot of the time...I'm really stuck because I have to use my car to do my job thanks'(sic)*

5.2.12 **Recommendation: Better information should be made available about travel expenses to help ensure that employees can make accurate claims. Some specific guidance, along with worked illustrations, outlining the applicability of the travel rules to different occupations with unusual travel patterns could be extremely helpful. In particular we believe that employees are often confused over the definition of temporary and permanent workplaces. There is also confusion over the concept of 'itinerant' and the type of employees that could be considered itinerant (other than travelling salesman and service engineers, the examples given over and over again in HMRC guidance).**

5.2.13 Poor information and guidance around the meaning of business travel has concerning ramifications in terms of incorrect tax claims – particularly for those who may not have an adviser to help defend them should their claim be challenged subsequently. However there

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<sup>1</sup> <https://www.gov.uk/tax-relief-for-employees/business-mileage-fuel-costs>

<sup>2</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32000>

are potential knock on effects for tax credits too – a significant source of financial support to many low-paid employees, including, we assume, this one:

*‘trying desperately to find out the real answer to - should I deduct AMAP (mileage) from my p60 before giving final figure to tax credits? Keep getting conflicting info’*

- 5.2.14 For tax credits, unreimbursed expenses are deducted from income if they are allowable for tax (even if full effect cannot be given to them because the employee does not earn enough to incur a tax liability). If an expense claim is later found to have been made in error, the tax credits award will turn out to be too high, resulting in recoverable overpayments, possibly a penalty and often severe hardship. This is an unacceptable situation.
- 5.2.15 In our experience, there is a great deal of confusion by tax credits helpline staff on deductions from income, including employment expenses. Claimants often do not realise they can deduct the costs from their income for tax credits purposes and this has got worse since HMRC started to replay RTI data on tax credits renewal notices. The RTI figure is not necessarily the right figure for tax credits as it does not take account of the various deductions that can be made from income. We have come across some claimants who have found it difficult to override the RTI data, even after speaking with the helpline and have been forced into the appeals process, which is undesirable for both claimants and HMRC.
- 5.2.16 Tax credit claimants will eventually be migrated across to UC which will replace income-based Job Seeker’s Allowance (JSA), income-based Employment and Support Allowance, Income Support, Child Tax Credit, Working Tax Credit and Housing Benefit. Ensuring employees pay the correct amount of tax in year is a feature of the RTI PAYE system, which in turn feeds into UC. UC will be calculated on a pay period basis depending on net income levels and hours worked. At the time of writing, it appears that unreimbursed employment expenses cannot be deducted from income for UC purposes and it is not clear whether this will remain the case as UC rolls-out to more people and how that fits with the use of RTI data in the UC system.
- 5.2.17 **Recommendations: HMRC, working with HMT and the DWP should do more to ensure that claimants are aware of their right to deduct expenses, and the limitations of RTI data in this respect. HMRC should also refrain from pursuing tax credit overpayments caused by confusion over the deductibility of temporary workplace expenses, where necessary.**
- 5.2.18 **In addition, the UC position on unreimbursed expenses should be confirmed as soon as possible. We reiterate that the current benefits and tax credits systems do allow such deductions to be made.**

### 5.3 **Administration**

- 5.3.1 Not only are the rules around unreimbursed expenses potentially difficult to understand, but there are administrative difficulties associated with claiming any relief individuals are entitled to. We have the following specific observations and suggestions to make which could help make the process more straightforward for employees.

- 5.3.2 Most low-paid employees would make a claim to HMRC on an annual basis to recover tax on their expenses by filing a form P87. Historically, this form has been paper based, but there is now an online version. This is something we called for in our 2013 report on tax refund companies and is a welcome development. However the form has been developed to sit within the Personal Tax Account which means a person has to have proved their identity via either the Government Gateway or GOV.UK Verify system to access it.
- 5.3.3 The GOV. UK Verify system is notorious for asking questions that are hard to pass.<sup>1</sup> It is easier to prove your identify with the Government Gateway, however there are still a number of steps required<sup>2</sup> including selecting the type of account that you want (this can be an Individual, Organisation, Agent or Pensions account), creating a username and password, undertaking a two-step phone verification and answering security questions about your payslips/P60 or passport – meaning it could still be a daunting (or even impossible) prospect for many, particularly if they are not IT savvy or do not have easy internet access (or indeed rely on a fiddly smartphone for internet access).<sup>3</sup>
- 5.3.4 **Recommendation: We think HMRC should host the P87 as a standalone form outside of the Personal Tax Account platform as they do the Marriage Allowance form, for example where you do not have to go through either the Government Gateway or GOV.UK Verify.**
- 5.3.5 If a person does successfully gain access to the Personal Tax Account, it is not immediately obvious where the P87 sits (the tax refund forms are in PAYE/current year/check your income tax estimate section which we are not sure is the most obvious place, particularly in view of the fact that people often only think of completing a P87 once the relevant tax year has finished).
- 5.3.6 If one can find the ‘Income Tax Forms’ they will find that they are asked for their Employer’s PAYE Reference, which they may not have been given as it is not a legal requirement for employers to show this on a payslip.<sup>4</sup> If they are claiming FRE they may also find that the form does not recognise their industry, essentially restricting them to a maximum claim of

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<sup>1</sup> This GOV.UK blog explains that only 60% of HMRC’s self-assessment customers who tried where able to Verify: <https://identityassurance.blog.gov.uk/2015/01/19/gov-uk-verify-self-assessment-trial-an-update/>

<sup>2</sup> We explain them here: <http://www.litrg.org.uk/tax-guides/tax-basics/digital-services-%E2%80%93-dealing-your-tax-and-tax-credits-online#toc-how-do-i-register-for-a-government-gateway-account->

<sup>3</sup> ‘Smartphones have overtaken laptops as the most popular device for getting online’ : <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/uk-now-a-smartphone-society>

<sup>4</sup> Such information may be available on the form P60, but vast numbers of taxpayers will not be very good at keeping their P60s and so this is another insurmountable hurdle for them to get over.

£60.<sup>1</sup> At the moment, the confusion around how to deal with these two questions could be causing error messages – preventing a taxpayer progressing with the form.

- 5.3.7 **Recommendations: We assume that the request for the Employer’s PAYE Reference is purely for a check and balance exercise, which seems unnecessary in the era of RTI and HMRC should consider removing this requirement. Alternatively, HMRC should make it perfectly acceptable to write ‘unknown’ or N/A in the box, and still be able to carry on with the form. Small details like this could make all the difference to a worker continuing with their claim or giving up – and potentially turning to a tax refund company. The form should also be tested on an ongoing basis to make sure it is in full working order at all times.**
- 5.3.8 Alternatively, there is a ‘print and post’ version of the P87 available on GOV.UK. You complete the form on screen and it asks you further questions depending on the answers you give, thereby aiming to make things quicker and easier for you. HMRC say that the form has been designed with the user in mind and information buttons are included next to some questions to help users comprehend and complete the form. They will be shown an error message if what they have entered appears to be wrong, or if they have missed an answer that is required – meaning more people should get the form right at the first attempt.
- 5.3.9 All of this is encouraging, however ‘Employer PAYE Reference’ is again a mandatory field, as is ‘Employee ID’ – which many employers, particularly small or micro employers do not allocate to their employees. Furthermore, even though you have to physically print and post the form off, you still have to complete it on screen, meaning there could still be issues for the digitally excluded. There is another problem for those unfamiliar with the process – you cannot save a partly completed form and while HMRC suggest you gather all your information together before you begin to fill it in, it is not possible to scroll through the form to see what the requirements of the various different sections are in advance (neither are there any instructions telling you exactly what you will need to have to hand before you start).
- 5.3.10 These issues may help explain the number of the queries we are getting to our website requesting paper forms (which are no longer available on GOV.UK):

*‘I would like to get p87 by post please. Thank you’*

*‘As i don't have access to a printer would you please send a P87 claim form to my home address’ (sic)*

*‘Is possible to post a former p87 to my address to claim,? Thank you’ (sic)*

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<sup>1</sup> At the time of testing, the form asked you to ‘Start typing the type of industry and select from the results that appear. If you cannot find your industry you can enter it manually’. However no results appear when you start typing and entering it manually prepopulates the ‘maximum claim for this industry’ box with £60.

5.3.11 **Recommendations: A more joined up approach is needed here – the user must be able to see everything the print and post form asks for at the outset – that way they could familiarise themselves with its requirements before starting to complete it. In any case, HMRC should reinstate the full, downloadable, PDF version of the form for people who may be unable to use any of the versions of the P87 available or who would simply prefer to fill out a paper form.<sup>1</sup>**

5.3.12 Even where people do manage to submit a P87 to HMRC, it appears that there are ongoing processing issues:

*‘placed a claim in for mileage claim at the beginning of April 2015 for year ending 2014 form says it can take up to 12 weeks, you did contact me to send a copy of my P60, which i did and you returned, its now been, a total of 49 weeks and i still haven't heard any news? would be grateful if someone could email me with the development of my claim as i am wondering if its worth me claiming for 2015!!’. (sic)*

*‘I have sent a P87 form with receipt and had receipt returned but have not heard anything since’ (sic)*

5.3.13 In light of this, we wonder whether now is the time to look at allowing employers to provide the tax relief adjustment at source – this would not only reduce some of the administrative burden for HMRC but it would provide the low-paid employee with a cash flow advantage.

5.3.14 We assume that these kind of considerations drove the OTS to suggest that employers should be able to process tax relief at source on employee expenses, in their second report on expenses and benefits:<sup>2</sup>

*‘5.31 We also recommend that employers should be allowed to obtain tax relief for their employees through net pay arrangements, i.e. through the payroll.*

*‘5.32 Employers would need to notify employees on the payslip that they have made the adjustment. We spoke to one employer who on encouragement from the unions has set up their payroll so that their employees get a deduction for FREs through the payroll. HMRC have indicated they are investigating this option further. This arrangement would be a natural complement to payrolling, as discussed in Chapter 1.’*

5.3.15 **Recommendation: We recommend that serious consideration is given to the OTS proposals around payrolling unreimbursed expenses.**

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<sup>1</sup> This conforms to the human rights law (see the case of *LH Bishop Electrical Co Ltd & Others v HMRC Commissioners* [2013] UKFTT 522 (TC).

<sup>2</sup> See the report dated January 2014 [https://www.gov.uk/Government/uploads/system/uploads/attachment\\_data/file/275795/PU1616\\_OT employee benefits final report.pdf](https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/275795/PU1616_OT employee benefits final report.pdf)

## 6 Are the tax rules for expenses suitable for the modern economy?

- 6.1 The Government would like views on whether the tax rules for expenses are suitable considering modern employer practices and working conditions. As we have touched on throughout our response, there is probably a case for a change to the current rules based on simplification alone. However, just as simplification is a key principle of a well-designed tax system so is fairness and we do not think the current rules are fair either.
- 6.2 The travel rules, for example, are premised on the, now outdated, concept of an employee having one job at a time over many years and do not address the issues of flexibility in the workforce which the government is so keen to encourage. We are very concerned that agency employees are not adequately catered for in the system.
- 6.3 Agency work can offer a stepping stone into the labour market for young employees, but they are often poorly paid and frequently have to change sites to stay in work. The unavoidable costs of getting to their assignment locations to perform their duties can take up a disproportionate amount of their wages. We have seen an example in an agency contract of expected travel time of up to an hour and a half each way (unpaid, of course), and more recently have read about a contractual 25 mile travel radius (as the crow flies, not road distance).
- 6.4 Yet, while the travel expense rules as they stand recognise the 'extra' costs of an international assignee on secondment to a 'temporary workplace' in the UK (and thus permit him to claim tax relief on a wide range of costs including rent, utility bills and food for up to 24 months)<sup>1</sup> they deny any travel expense relief to, often, low-paid 'temps' (despite them having little ability to plan around those costs).<sup>2</sup> There seems to be no reasonable or fair basis for this and this arbitrary rule completely misses the lengths that these temporary employees have to go to, to gain and stay in work.

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<sup>1</sup>Under 'detached duty relief' deductions may be claimed on expenses such as:

- travel from the home country to take up the UK assignment and any subsequent trips home,
- ordinary commuting costs while in the UK on assignment,
- assignment accommodation costs including rent, certain utility costs and even sometimes TV licence and gardening costs,
- daily subsistence costs which could even include amounts spent out on meals.

<sup>2</sup> See EIM32130 – 'Where a worker provides his or her services through an agency and the agency legislation in Section 44 ITEPA 2003 applies, each agency contract is treated as a separate employment.... Therefore, where there is only one workplace for an agency contract that workplace will be a permanent workplace for that employment. The agency employment is dealt with as a fixed term appointment.'

- 6.5 In light of this unfairness, it is hardly surprising that the problematic ‘umbrella’ phenomenon has taken hold in recent years, sweeping through every aspect of the UK’s ‘temporary’ workforce essentially providing a framework within which an agency employee’s successive work locations could be turned into ‘temporary workplaces’ for the purposes of meeting the requirements of tax legislation and gaining access to tax relief on their travel and subsistence costs.
- 6.6 We looked at the matter in detail in our travel expenses report released in 2014<sup>1</sup> and as a result have good insight into the industry. While the Government may have hoped that problems around travel and subsistence have dissolved since April 2016 due to the new rules limiting home-to-work travel and subsistence expense relief for workers employed through an intermediary, such as an umbrella company, providers have found ways to duck the new rules – so this is a problem that is not going to go away.
- 6.7 To explain, from April 2016, section 339A ITEPA 2003 – Travel for necessary attendance: employment intermediaries – restricts access to relief for home to work travel and subsistence where a worker:
- personally provides services to another person
  - is employed through an employment intermediary (such as an umbrella company)
  - is under (the right of) the supervision, direction or control (SDC) of any person, in the manner in which they undertake their work
- 6.8 If the above apply, each engagement the worker undertakes will be a separate employment for the purposes of obtaining relief for travel and subsistence, i.e. the ‘umbrella arrangement’ is ineffective.
- 6.9 In addition, section 289A ITEPA 2003 – Exemption for paid or reimbursed expenses (also introduced from April 2016) – restricts the ways in which an umbrella company can reimburse a worker’s expenses. This is because the exemption only applies where the payment or reimbursement is not provided pursuant to relevant ‘salary sacrifice arrangements’ (these are usually a feature of umbrella arrangements).
- 6.10 However, the s289A ITEPA 2003 rules do not apply to mileage reimbursements (they are not a part 5 ITEPA deduction but a part 4 ITEPA exemption). This means that umbrella companies can continue to process salary sacrificed expenses at the point of pay as before where they are in the form of mileage reimbursements. Given the employer NIC saving that comes in conjunction with doing this, and with little fear of HMRC’s compliance function, workers are just being arbitrarily assessed by umbrella companies as being outside SDC in order to take full advantage of this loophole.
- 6.11 **Recommendation: We understand the Government is looking to re-establish some general principles around employment expenses and ensure these are in line with current**

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<sup>1</sup> <http://www.litrg.org.uk/sites/default/files/LITRG%20PAYE%20report%20FINAL.pdf>

**employment practices. We therefore repeat the call made in our travel expenses report that low paid agency workers should be provided with relief for their travel costs – by perhaps treating them the same as site-based employees. This would of course have an associated cost, however it would also remove the incentive for many of the ‘schemes’ from the labour market – saving considerable effort all round.**

- 6.12 We finish this section by saying that there is a broader point to be made about lack of generosity in the tax system for those who do not have their expenses paid or reimbursed by their employer. It is unfair that some expenses are permitted tax relief in instances of reimbursement, but are denied a corresponding deduction in instances of non-reimbursement – as in the case of passenger payments.<sup>1</sup> There are other, particularly troubling examples of this in the rules related to disabled employees which we looked at in our response to the DWP and Department of Health’s *Work, health and disability green paper: improving lives*.<sup>2</sup>
- 6.13 For example, section 246 ITEPA 2003,<sup>3</sup> gives an income tax exemption if transport is provided between home and work for a disabled employee, or if the employer pays for such transport or reimburses the expense incurred. On the basis that inaccessible transport is the second biggest barrier to employment for disabled people (after lack of job opportunities) this is a sensible relief. However, disabled employees cannot claim a tax deduction for costs which they bear themselves and are not reimbursed by the employer.
- 6.14 Separately, where tax relief may be claimed even if the expenses are not reimbursed, there is no NIC deduction for that expense. For example, if an employee travels 100 miles in his own car to a work conference carrying a fellow employee, then he can be reimbursed £50<sup>4</sup> tax and NIC free by his employer (essentially saving a basic rate taxpayer £16 in tax and NIC).<sup>5</sup> However, another employee in exactly the same circumstances who is not reimbursed, can only make a tax deduction claim for the £45 mileage and this would only be

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<sup>1</sup> Subsistence scale rates are another issue – if an employee incurs a sandwich at the cost of £3.50, he can be reimbursed up to £5 by his employer on a tax and NIC free basis – essentially giving him £1.50 of tax and NIC free ‘profit’. However the employee who does not get his subsistence reimbursed can only claim £3.50. A £5 lunch ‘allowance’ per day would make it simpler for employees to calculate their personally incurred and non-reimbursed expenses. The MAR works on this basis, so why not subsistence?

<sup>2</sup> <http://www.litrg.org.uk/sites/default/files/files/170217-LITRG-response-disability-green-paper-FINAL.pdf>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2003/1/section/246>

<sup>4</sup> 100 miles x 45p (for his mileage) plus 100 miles x 5p (for the passenger payment) = £50

<sup>5</sup> 20% tax on £50 is £10 and 12% NIC on £50 is £6 = £16

a tax claim, not a tax and NIC claim (saving him £9 at the basic rate). He is therefore £41 worse off.

6.15 These anomalies are one of the main reasons for the OTS's following recommendations:

'7.5 We recommend that a review of the underlying rules is undertaken with a view to aligning the rules as far as possible. If there are to be differences, these should be clear and well known (for example pension contributions might remain income tax deductible but not deductible for NICs to reflect NICs not being charged on pensions). To the extent that separate and different rules are kept (for example pensions) this should be as a result of clear policy decisions.

'7.6 Ideally the deductions which employees are entitled to themselves should also match. However, this is a more radical change to the NICs system as employees could then be entitled to repayment of NICs whilst employers would have no knowledge to obtain a repayment of their contributions. It is recognised that this is probably a step for a later stage of integration of the two systems.'

6.16 **Recommendation: We wholeheartedly agree with these recommendations and urge that they be considered, especially in relation to the disability related examples, where there is a principled case for regularising the position (which dovetails with other policy aims, such as reducing the disability employment gap).**

## 7 The future of employee expenses

7.1 We understand that HMT are interested in whether agents have changed their practices in supporting people to claim expenses and how their expense practices might change in future. We would therefore like to take the opportunity in this section to discuss the role of tax refund companies in claiming employee expenses and look at what more could be done to support taxpayers to make claims themselves.

7.2 Let us start by saying that we recognise that there will always be taxpayers who prefer to use agents for peace of mind and many agents are bona fide, affiliated to a professional body, and charge proportionate fees for the service they provide. However our report on tax refund companies<sup>1</sup> identified a range of consumer protection issues with some of the more exploitative agents, and made pages of recommendations. While some of these were taken up, many were not (or were overtaken by other changes to the tax system) meaning that

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<sup>1</sup> <http://www.litrg.org.uk/latest-news/reports/131015-tax-repayment-system-and-tax-refund-organisations-call-action>

several years on, we know that low paid people are still losing much-needed funds by falling into the hands of certain tax refund companies.

- 7.3 We acknowledge that HMRC have invested in improvements in certain areas, e.g. offering online channels to apply for refunds, restricting agent access to taxpayer pay and tax details<sup>1</sup> and dealing with refund agents who were giving the impression they were in some way affiliated to or approved by HMRC. However tax refund companies continue to proliferate, particularly in the area of employment expenses, which suggests that things are still too complex or that taxpayers are still being swayed because of things like over inflated promises or tax refund companies alluding they that have an inside track with HMRC.
- 7.4 **Recommendations: We suggest that the Government re-visit the recommendations in our refund company report on easing the tax refund system – only some of which we have picked up throughout this piece of work – as this may help check the activities of less scrupulous tax refund companies in time.**
- 7.5 **Other ‘quick fixes’, like resuming work with internet service providers to ensure that paid-for adverts stop turning up at the top of search engine results,<sup>2</sup> might mean that many taxpayers who are currently using companies to help them make very straightforward claims could instead make their own claims at little or no cost.**
- 7.6 In addition, as a consequence of tax refund companies’ bread and butter activities probably being curtailed by things like auto reconciliations undertaken by the National Insurance and PAYE Service (NPS) system which, for claims around unused personal allowances, now give people an easy way of accessing their refund, it seems that some may be turning to aggressive and underhand tactics to secure work. Here are some emails we have recently received on the matter:

*‘I have been duped into claiming my tax refund through an on-line agency and I want to know if there is any way I can get my money back? They took half my refund in their fees, but I don't believe I gave authority - I was led to believe I was dealing with HMRC’*

*‘at a very vulnerable time i was contacted by a tax rebate company called (tax refund company). I now have had a tax rebate and HMRC tell me that they have sent the money to this company without letting me know and said that i authorised it I have asked for a copy of the letter i have supposed to have signed. (tax refund company) do not have a phone number*

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<sup>1</sup> <https://www.att.org.uk/technical/news/changes-agents-requesting-pay-tax-details-their-clients-hmrc>

<sup>2</sup> Some work was undertaken on this back in 2014 (see here: <https://gds.blog.gov.uk/2014/03/02/report-a-misleading-website-to-search-engines/>) however paid for Ads are beginning to creep back into search engine results for Government services again.

*for me to discuss this with them as they are stating in form that will charge me 40% of the amount which is £1875.80 which comes to £750.32...'*

*'I have received my tax rebate from a company called (tax refund company) and don't remember asking them to do it for me. Why would I when I get my rebate automatically from HMRC? They have taken 40% of my rebate i was so upset as I had received notice from HMRC that I would be getting nearly £700 and with their chunk taken off I got a cheque for less than £400! I cried as I don't remember giving anyone the go ahead to do this'*

- 7.7 **Recommendations: We think HMRC have a duty of care to ensure that taxpayers are making informed choices and should be more proactive in monitoring tax refund organisations and putting out some 'health warnings' about tax refund companies as necessary.**
- 7.8 **HMRC's efforts should form part of a wider plan to protect vulnerable workers. Therefore we strongly recommend that the Budget announcement<sup>1</sup> on strengthening consumer protection will include putting tax refund companies under the spotlight.**
- 7.9 We hope that after reviewing responses to this call for evidence, the Government's intended follow up will lead to further action to improve the outcomes (and therefore standard of living and wellbeing) for those in low-paid work with regards to their expenses. We very much look forward to contributing to the ongoing work in this area and would be willing to enlarge upon any of the areas covered in this submission, if it would be helpful to do so.

LITRG  
10 July 2017

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<sup>1</sup> Which we refer to in our Press Release: <http://www.litrg.org.uk/latest-news/news/170308-press-release-help-consumers-must-include-clampdown-copycat-tax-refund>